

Remarks

Claims 6-9 and 32-36 are now in the case.

I. Claim Rejections under 35 U.S.C. 103

The examiner has rejected claims 6-8 under 35 U.S.C. 103(a) based on Mizushima in view of Karlock. The examiner has rejected claims 9, 35, and 36 under 35 U.S.C. 103(a) based on Mizushima in view of Karlock and in view of Easterly. The examiner also appears to have rejected claims 32-35 under 35 U.S.C. 103(a) based on Mizushima in view of Karlock, although that is somewhat unclear. (Examiner's Office Action dated 8/26/2005, pg. 4, second paragraph, refers to claim 31, although claim 31 is not pending, and does not clearly state that claims 32-35 are rejected based only on Mizushima in view of Karlock).

In any case, the examiner's rejections under 35 U.S.C. 103 are respectfully submitted to be incorrect. In rejecting the applicant's claims the examiner states:

"With regards to the function of the processor adjusting the black level in a specific manner, applicant is directed to MPEP 2114, which states 'Apparatus Claims Must Be Structurally Distinguishable From the Prior Art' and also states 'Manner of Operating The Device Does Not Differentiate Apparatus Claim From the Prior Art'. Accordingly applicant new functional language is irrelevant". (Examiner's Office Action, dated 8/26/2005, pg. 6, first paragraph).

The examiner's interpretation of the law is incorrect, at least in regard to processors (i.e. computers). The Federal Circuit has stated:

"A general purpose computer, or microprocessor, programmed to carry out an algorithm creates a 'new machine, because a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software'." WMS Gaming, Inc. v. International Game Technology, 184 F.3d 1339 at 1348 (Fed. Cir. 1999) citing In Re Alappat, 33 F.3d 1526, at 1545 (Fed. Cir. 1994) (en banc).

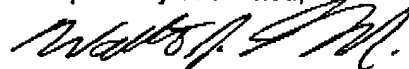
Respectfully, the examiner in this case has failed to consider the functional language. With the functional language considered the claims are submitted to be allowable.

The applicant, additionally asserts that it is not obvious or suggested to combine Mizushima and Karlock or Mizushima, Karlock, and Easterly, however, the applicant will not address those questions in detail here, since the examiner has made a clear error of law as shown above.

II. Conclusion

Claims 6-9 and 32-36 are respectfully submitted to be in a condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested.

Respectfully submitted,



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